

**TENNESSEE BOARD OF PHARMACY
MAY 25 – 26, 2004
ROOM 160 – DAVY CROCKETT TOWER
NASHVILLE, TN**

BOARD MEMBERS PRESENT:

Robert Shutt, President
Reggie Dilliard, Vice President
Julie Frazier, Member
Sheila Mitchell, Member
James R. Mitchell, Member
Forrest Parmley, Member
Monica Franklin, Public Member

STAFF PRESENT:

Harry Fuqua, Acting Director
Alison Zane, Legal Counsel
Martha Agee, Board Administrator
Terrence Cannada, Pharmacist Investigator
Harry Fuqua, Pharmacist Investigator
Terry Grinder, Pharmacist Investigator
Richard Hadden, Pharmacist Investigator
Ralph Staton, Pharmacist Investigator

The Tennessee Board of Pharmacy convened on Tuesday, May 25, 2004, in Room 160 of the Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. A quorum of the members being present, the meeting was called to order at 9:00 a.m. CDT by Dr. Robert Shutt, President. Acting Director, Dr. Harry Fuqua advised the Board Dr. Kendall Lynch was recuperating from hip surgery and doing well. Dr. Fuqua introduced Ms. Suzanne Muench, a pharmacy student from Germany.

APPROVAL OF THE MINUTES

The **minutes of the March 16 -17, 2004**, board meeting were presented and reviewed by the Board. Mrs. Monica Franklin motioned to **approve the minutes**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

CONSENT ORDERS

JANET M. HARTMAN, DPH
1715 Dellwood Circle
Greeneville, TN 37745

Ms. Alison Zane, legal counsel, presented a Consent Order for Dr. Janet Hartman for the indefinite suspension of her pharmacist license for chemical dependency. Dr. Julie Frazier motioned to **accept** the Consent Order; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

Tennessee Board of Pharmacy
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CHAD JAGGERS, DPH
45 Reid Hollow Lane #F
Jackson, TN 38305

Legal counsel, Ms. Alison Zane, presented a Consent Order for Reinstatement of Dr. Chad Jagers' pharmacist license with a probationary period of ten (10) years. Dr. Reggie Dilliard motioned to **accept** the Consent Order for Reinstatement; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

GREGORY K. JONES, DPH
434 Coralwood Drive
Kingsport, TN 37663

Ms. Alison Zane, legal counsel, presented a Consent Order for Dr. Gregory Jones for the indefinite suspension of his pharmacist license for chemical dependency. Dr. Julie Frazier motioned to **accept** the Consent Order; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

C. CRAIG LINER, DPH
3630 Steeple Chase Lane, NE
Chattanooga, TN 37421

Legal counsel, Ms. Alison Zane, presented a Consent Order for Dr. Craig Liner for violation of Rule 1140-3-.01 relevant to patient counseling. Dr. Liner was assessed a civil penalty of \$250. Dr. Liner conducted an in-service training program with his employees on April 29, 2004, to review dispensing policies and procedures pursuant to the Board's directives. Dr. Julie Frazier motioned to **accept** the Consent Order; seconded by Dr. Reggie Dilliard. All were in favor and the motion carried.

JAMES PICKLE, DPH
312 Shutes Cove
Old Hickory, TN 37138

Ms. Alison Zane, legal counsel for the Board, presented a Consent Order for Reinstatement of Dr. James Pickle's pharmacist license with a probationary term of ten (10) years. Dr. Pickle changed the Consent Order relevant to the aftercare contract to reflect the Concerned Pharmacist Committee. The

correction was initialed by Director Kendall Lynch and Dr. Pickle. Dr. Robert Mitchell motioned to **accept** the Consent Order for Reinstatement; seconded by Dr. Julie Frazier. Dr. Reggie Dilliard recused from voting. The motion carried.

THOMAS R. RICHARDSON, DPH

688 Russell Road

Jackson, TN 38301

Legal counsel, Ms. Alison Zane, presented a Consent Order whereas Dr. Thomas Richardson took Dexedrine tablets from the pharmacy where he was completing his pharmacy internship in 2003. Dr. Richardson agreed to a three (3) year term of probation. Mrs. Monica Franklin motioned to **accept** the Consent Order; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

JENNIFER RODGERS, DPH

709 Park Drive

LaFollette, TN 37766

Ms. Alison Zane, counsel, presented to the Board a Consent Order for the surrender of Dr. Jennifer Rodgers' pharmacist license. Dr. Rodgers pled guilty before the United States District Court of Middle Tennessee to diverting approximately 100,000 units of controlled substances of Percocet, Hydromorphone, Oxycodone and Hydrocodone from the Veteran's Affairs Medical Center while employed as a pharmacist. Dr. Rodgers is currently incarcerated. Dr. Sheila Mitchell motioned to **accept** the Consent Order; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

ROGER ALAN SMITHSON, DPH

2911 Brunswick Road

Memphis, TN 38133

Ms. Alison Zane, legal counsel, presented a Consent Order for the indefinite suspension of Dr. Alan Smithson's pharmacist license for chemical dependency. Dr. Robert Mitchell motioned to **accept** the Consent Order; seconded by Dr. Forrest Parmley. All were in favor and the motion carried.

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JAMES DON WILSON, DPH
9 Jeffrey Court
Jackson, TN 38305

Ms. Alison Zane informed the Board Dr. Wilson was scheduled for a formal hearing before the Board. Dr. Wilson pled guilty to theft over \$10,000. Ms. Zane stated during Dr. Wilson's civil trial, he failed to respond to a motion. Since Dr. Wilson did not respond to the motion, he was found guilty and assessed a civil penalty of \$364,000. The Consent Order presented by counsel, Ms. Zane, is for a five (5) year suspension of Dr. Wilson's pharmacist license and the revocation of the Medicine Cabinet Pharmacy, license #1827. Dr. Sheila Mitchell motioned to **accept** the Consent Order; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

HILARY FLICKINGER, DPH
CLEN'S PHARMACY II, INC.
8622 Asheville Highway
Knoxville, TN 37924

Legal counsel, Ms. Alison Zane, presented a Consent Order whereas Dr. Hilary Flickinger was in violation of Rule 1140-3-.01 for failure to provide patient counseling. Dr. Flickinger was assessed a civil penalty of \$250. Dr. Robert Mitchell motioned to **accept** the Consent Order; seconded by Dr. Forrest Parmley. All were in favor and the motion carried.

#200210545

Legal counsel, Ms. Alison Zane, stated the complaint alleges that a pharmacist took controlled substances from the pharmacy in which he worked, for his own personal use. The pharmacist admitted to taking several four (4) ounce bottles of Hydrocodone cough syrup for his personal use and without a prescription. The pharmacist has previous disciplinary actions with the Board. Ms. Zane, upon the request from the pharmacist, presented to the Board a proposed Agreed Order with a three (3) years term of probation. Dr. Reggie Dilliard motioned to **reject the proposal**; seconded by

Dr. Robert Mitchell. All were in favor and the motion carried. **The Board will accept the surrender of his pharmacist license.**

CARRIE L. BUCKLES, RT
711 N. East Street
Elizabethton, TN 37643

Ms. Alison Zane, counsel, presented a Consent Order for the surrender of Ms. Carrie Buckles' pharmacy technician registration in the State of Tennessee. Ms. Buckles altered the number of refills on a prescription without the physician's authorization and billed these refills to the patient's insurance company. Mrs. Monica Franklin motioned to **accept** the Consent Order; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

JURISPRUDENCE EXAM STATISTICS

The Jurisprudence exam for the first and second quarters 2004 was administered at the board office in Nashville, Tennessee. The Pharmacy Board Investigators administered the exam.

First quarter 2004: All of the candidates successfully passed the Jurisprudence Exam.

Reciprocals	21
Reinstatements	3
NAPLEX	6
Foreign Grads	7
Score Transfers	2

Second quarter 2004: All of the candidates successfully passed the Jurisprudence Exam, with the exception of two (2) NAPLEX candidates.

Reciprocals	42
Reinstatements	4
NAPLEX	47
Foreign Grads	2
Score Transfers	11

On **May 26, 2004**, the Tennessee Board of Pharmacy administered the Jurisprudence Exam to one-hundred fourteen (114) University of Tennessee students, reciprocals and score transfer candidates in Memphis, Tennessee. All of the candidates successfully passed the exam.

**ROGER ALAN SMITHSON, DPH – REQUEST FOR REINSTATEMENT OF LICENSE
MEMPHIS, TN**

Dr. Alan Smithson appeared before the Board to request the reinstatement of his pharmacist license. Advocating on his behalf were Dr. Mike Matheny, Dr. Jamie Mason and Dr. Brian Kilpatrick with TPRN. Dr. Julie Frazier recused herself. Acting Director Harry Fuqua advised the Board on January 14, 2004 Dr. Smithson was arrested by the Veteran Affairs police in Murfreesboro for the possession of drug related paraphernalia. On January 19, 2004, Dr. Smithson entered Charter for a four day drug abuse evaluation and returned for a period of stay for four to six weeks. Dr. Smithson stated he has signed a contract with TPRN and is in the process of completing the 90/90. The 90/90 will be completed on June 9, 2004. Dr. Mike Matheny stated Dr. Smithson's support group consists of family, co-workers, TPRN and A/A sponsors and is compliant with his TPRN contract. Dr. Brian Kilpatrick stated Dr. Smithson is willing to do what is asked of him from the TPRN group. After board discussion,

Dr. Sheila Mitchell motioned:

1. Respondent does hereby agree to the reinstatement of license number **6577** with the following probationary conditions. Said probation shall remain in effect for a period of five (5) years, from **May 25, 2004 to May 25, 2009**.*

- (a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b).
- (b) The Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, Paul Patel, MD, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes primary physicians;

- (c) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- (d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- (e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- (f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacists Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;
- (g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he or she entered into with Tennessee Pharmacists Recovery Network. Respondent shall return a copy of said contract with this Consent Order to the Board office;

(h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years, however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a “floater” for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;

(i) If the license has been inactive, delinquent, suspended or revoked:

(i) Less than one (1) year, the pharmacist shall:

- I. Provide written notice requesting an active license;
- II. Satisfy all past due continuing pharmaceutical education; and
- III. Pay all cumulative license renewal fees and any applicable penalties.

Dr. Reggie Dilliard made a **friendly amendment to the motion to change the period of probation** from May 25, 2004 - May 25, 2009 to ***June 9, 2004 - June 9, 2009, the date the 90/90 is completed**. Dr. Robert Mitchell seconded the amendment. Dr. Reggie Dilliard seconded the motion. Dr. Julie Frazier recused from voting. The motion carried.

HUNTER CULBERTSON – REQUEST FOR REINSTATEMENT OF LICENSE TULLAHOMA, TN

Dr. Hunter Culbertson appeared before the Board to request the reinstatement of his pharmacist license. Dr. Cliff Weiss, Dr. Rusty Shepherd, and Dr. Hans Oehlschlaeger with TPRN were in attendance advocating on his behalf. Dr. John Crow, Dr. Tina Posey, Dr. Jim Stedman and Dr. Randall Jean with TPRN were also in attendance. Acting Director Harry Fuqua stated in January, 1995, Dr. Culbertson entered Talbott for treatment of chemical dependency. In May, 1995, Dr. Culbertson entered into a Consent Order with the Board with TPRN advocacy. In January, 1998, Dr. Culbertson’s Consent Order was modified to allow a change in his advocacy to the Tennessee

Medical Foundation (TMF) for the remainder of his contract. In September, 2002, Dr. Culbertson admitting to relapsing and he signed a Consent Order for the surrender of his license. Dr. Culbertson entered Charter and later left against medical advice due to charges being filed against him for theft of property and possession of a controlled substances. In September, 2003, Dr. Culbertson surrendered his Funeral/Embalmers license with the Board of Funeral Directors, Embalmers, Burial and Cemetery Services. Dr. Culbertson stated he changed advocacy groups as he was looking for an easier outlet. In November, 2002, Dr. Culbertson was arrested for theft of property over \$500 and possession of a controlled substance. Dr. Culbertson stated he pled guilty to the charges upon the advice from his attorney in order to obtain probation and was placed on deferred judgment for one (1) year and assessed a \$2,000 fine. An Order for the Expungement of Criminal Offender Record was entered and approved for entry in the Circuit Court of Coffee County, in Manchester, Tennessee on March 25, 2004. Dr. Culbertson's support network consists of the TPRN advocacy group and a therapist, as he has no biological family support. Dr. Rusty Shepherd and Dr. Hans Oehlschlaeger stated Dr. Culbertson was compliant with the TPRN requirements. After board discussion, Dr. Reggie Dilliard motioned:

1. Respondent does hereby agree to the reinstatement of license number **6086** with the following probationary conditions. Said probation shall remain in effect for a period of ten (10) years, from **May 25, 2004 to May 25, 2014.**
 - (a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b).
 - (b) The Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, Darryl Arnett, MD, except in the case of an emergency or upon a proper referral from the Respondent's primary

physician. The Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes primary physicians;

- (c) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- (d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- (e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- (f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacists Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;

(g) Respondent shall comply with all of the terms and conditions of the extended aftercare contract he or she entered into with Tennessee Pharmacists Recovery Network. Respondent shall return a copy of said contract with this Consent Order to the Board office;

(h) Respondent shall not serve as pharmacist-in-charge for a period of three (3) years, however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a “floater” for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;

(i) If the license has been inactive, delinquent, suspended or revoked:

(ii) One (1) year to not more than five (5) consecutive years, the pharmacist shall:

- I. Provide written notice requesting an active license;
- II. Satisfy all past due continuing pharmaceutical education;
- III. Successfully complete the jurisprudence examination;
- IV. Pay all cumulative license renewal fees and any applicable penalties;
- V. Complete a period of pharmacy internship in Tennessee.

A. From one (1) year to not more than three (3) consecutive years, one hundred sixty (160) hours within ninety (90) consecutive days;

in addition to continuing therapy sessions. Mrs. Monica Franklin seconded the motion. All were in favor and the motion carried.

**MARK GREENE, DPH – REQUEST FOR REINSTATEMENT OF LICENSE
DICKSON, TN**

Dr. Mark Greene appeared before the Board along with TPRN advocates Dr. Cliff Weiss, Dr. Jamie Mason, Dr. Brian Kilpatrick and Dr. John Crow, to request the reinstatement of his pharmacist license. Dr. Forrest Parmley recused himself. Acting Director Harry Fuqua advised the Board in September, 1994, Dr. Greene voluntarily entered Talbott Marsh for chemical dependency. On January 24, 1995, Dr. Greene entered into a Consent Order for Reinstatement with the Board with a probationary term of five (5) years. In April, 2001, Dr. Greene diverted Meprozone from his employer. On July 17, 2001, Dr. Greene surrendered his license due to addiction. On July 17, 2002, Dr. Greene was incarcerated for seven (7) months in the Bedford County Jail for theft over \$1,000. The criminal probation period with the Bedford County Probation System states July 17, 2002 – July 16, 2003. The **Board advised Dr. Greene to furnish copies of court documents, a letter from the probation officer and letters of recommendation.** Dr. Greene stated he would work towards that goal. The Board took no action.

**BRENDA WARREN, PIC
HARRY TRAVIS, DPH, CHIEF OPERATION OFFICER
NOVA FACTOR
Memphis, TN**

Dr. Brenda Warren and Dr. Harry Travis with Nova Factor appeared before the Board to discuss a proposed arrangement with MedcoHealth Solutions and Rule 1140-3-.04. After board discussion, Dr. Sheila Mitchell motioned to approve the arrangement; seconded by Mrs. Monica Franklin. Dr. Sheila Mitchell withdrew her motion as the Board was unsure if this type of arrangement would fall under central fill but were in agreement that the exchange of a copy of the prescription was consistent with Rule 1140-3-.04 (1) (f).

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RODNEY TUBBS, DPH
WINCHESTER, TN

The Board office received an e-mail from Dr. Paula Hinson regarding Dr. Rodney Tubbs, who was shot during an attempted armed robbery of the pharmacy. Dr. Tubbs is in intensive care.

WAIVERS

PHILLIP W. BRADLEY, DPH
BRADLEY DRUG CO.
5208 Charlotte Avenue
Nashville, TN 37209

Dr. Phillip Bradley is requesting a waiver of Rule 1140-3-.14 (12) relevant to being the pharmacist in charge at more than one pharmacy practice site. Dr. Bradley is currently the PIC at Bradley Drug Co. and plans to open Bradley Extended Care in the same building. Dr. Reggie Dilliard motioned to approve the waiver request; seconded by Dr. Sheila Mitchell. Dr. Reggie Dilliard withdrew the motion. Dr. Julie Frazier stated the waiver is not denied or approved but to request additional information regarding the operation of the pharmacy. Dr. Robert Mitchell **tabled the motion**. The Board is requesting additional information.

TRICIA L. JENNEWEIN, DPH
BERGSTRAAT 44
1560 Hoeilaart
Belgium

Dr. Tricia Jennewein is requesting a waiver of Rule 1140-5-.01 (1) relevant to the fifteen (15) Live ACPE continuing education hours needed for renewal of her pharmacist license. Dr. Julie Frazier motioned to **grant** the waiver for this renewal cycle but needs thirty (30) hours. Dr. Robert Mitchell seconded the motion. All were in favor and the motion carried.

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DONNA MCCOY, DPH
12318 Hardwick Road
Louisville, KY 40243

Dr. Donna McCoy is requesting a waiver of Rule 1140-1-.07 (3) (b) (3) and (5) relevant to the Jurisprudence Exam and period of internship. Dr. McCoy's license expired on January 31, 2003 and she requested information for reactivation of her license on March 23, 2004. Dr. Sheila Mitchell motioned to approve the waiver for the internship hours and Jurisprudence Exam; seconded by Mrs. Monica Franklin. A Roll Call vote was taken.

<u>BOARD MEMBER</u>	<u>VOTE</u>
Reggie Dilliard	No
Julie Frazier	No
Sheila Mitchell	Yes
Monica Franklin	Yes
Robert Mitchell	Yes
Forrest Parmley	No
Robert Shutt	Yes

The motion carried.

JOHN TALIAFERRO, DPH
P. O. Box 204
Smyrna, TN 37167

Dr. John Taliaferro is requesting a waiver of Rule 1140-5-.01 relevant to the fifteen (15) Live ACPE continuing education hours required for license renewal due to a medical hardship. Dr. Robert Mitchell motioned to **approve** the waiver; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

BRYAN JONES, DPH
SOUTHERN TENNESSEE MEDICAL CENTER
185 Hospital Road
Winchester, TN 37398

Dr. Bryan Jones is requesting a waiver of Rule 1140-3-.14 (12) relevant to being the Pharmacist-in-Charge at more than one pharmacy practice site. Dr. Jones is currently the PIC at Southern

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Tennessee Medical Center in Winchester, Tennessee and is requesting PIC privileges at Emerald-Hodgson Hospital, a 20-bed acute care hospital located in Sewanee, Tennessee. After board discussion, Dr. Julie Frazier motioned to **grant the waiver for six (6) months**; seconded by Dr. Robert Mitchell. Dr. Sheila Mitchell voted “no”. The motion carried.

PAUL NEUN, DPH
934 Cothran Road
Columbia, TN 38401

Dr. Paul Neun is requesting a waiver of Rule 1140-3-.14 (12) relevant to being the Pharmacist-in-Charge at more than one pharmacy practice site. Dr. Neun is currently the PIC at Quality Respiratory Care in Columbia, Tennessee, which handles respiratory medications. CVS #6421 is requesting Dr. Neun to take over the PIC responsibilities at the pharmacy located on Nashville Highway, in Columbia, Tennessee. Dr. Reggie Dilliard motioned to **approve** the waiver; seconded by Mrs. Monica Franklin. Dr. Robert Mitchell stepped out of the room. All were in favor and the motion carried.

WILLIAM ROE, DPH – MODIFICATION OF CONSENT ORDER
HUMBOLDT, TN

Dr. William Roe is requesting a Modification of the Consent Order he signed on February 19, 2003 relevant to the Pharmacist-in-Charge provision while on probation for two (2) years. The Consent Order was accepted by the Board on March 18 – 19, 2003. Dr. Julie Frazier motioned to request Dr. Roe to **appear before the Board**. Mrs. Monica Franklin seconded the motion. All were in favor and the motion carried.

On Thursday, May 26, 2004, Dr. Roe made an appearance before the Board to address the Board’s concerns relevant to the modification. After discussion, Dr. Reggie Dilliard motioned to extend the two year term of probation from March 18 – 19, 2003 to March 18 – 19, 2005 to **March 18 – 19, 2005 through March 18 – 19, 2007**; the Respondent shall not be allowed to fill his own prescriptions; and

pharmacy investigator, Dr. Terry Grinder will observe and report to the Board the pharmacist status.

Dr. Robert Mitchell seconded the motion. Dr. Forrest Parmley voted “no”. The motion carried.

ARTHUR ALLEN, DPH
7854 Treasure Cove Court
Reno, NV 89506

Dr. Arthur Allen is requesting a waiver of Rule 1140-5-.01 relevant to the Live ACPE continuing education hours required for the renewal of license. Dr. Allen stated the live continuing education programs, especially ACPE accredited, are scarce in Nevada. Dr. Reggie Dilliard motioned to **grant a six month extension to obtain the hours and these hours can not be used for the next renewal cycle**. Dr. Sheila Mitchell seconded the motion. Dr. Forrest Parmley voted “no”. The motion carried.

PATRICIA GUY, DPH
934 Cothran Road
Columbia, TN 38401

Dr. Patricia Guy is requesting a waiver of Rule 1140-3-14. (12) relevant to being the “temporary” pharmacist-in-charge at two (2) pharmacy practice sites. Dr. Guy is currently the PIC at Southeast Memphis Mental Health Center. The PIC at Southeast Memphis Mental Health Center, Inc. Extended, an inpatient pharmacy, will be leaving as of May 28, 2004. A “temporary” pharmacist will cover Southeast Memphis Extended from June 1, 2004 through the end of July, 2004. Dr. Sheila Mitchell motioned to **grant the PIC waiver request through July 31, 2004**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

BOB HANSEN, DPH
VICE PRESIDENT PHARMACY SERVICES
ASTERES, INC.
1343 Stratford Court
Del Mar, CA 92014

Dr. Bob Hansen and Dr. Ellen Haviland appeared before the Board to discuss the functions of the Asteres Scriptcenter, an automated prescription pick-up device; and to request the Board’s approval

to proceed with the installation of the units into licensed pharmacies. The Board expressed concern relevant to patient counseling, patient profiling and drug regimen review under Rule 1140-3-.01. Dr. Julie Frazier noted to Dr. Hansen, under Tennessee rule, a pharmacist shall personally counsel the patient or caregiver “face to face” and the Asteres Scriptcenter does not meet the requirement of the Rule. Dr. Hansen and Dr. Haviland appreciated the opportunity to speak with the Board.

**HAROLD SHALETT, DPH – REQUEST FOR REINSTATEMENT OF LICENSE
CHATTANOOGA, TN**

Dr. Harold Shalett was scheduled to appear before the Board to request the reinstatement of his pharmacist license but he did not appear.

**CHARLES JEFF CHRISTIAN, DPH – REQUEST FOR REINSTATEMENT OF LICENSE
KINGSPORT, TN**

Dr. Charles Jeff Christian appeared before the Board to request the reinstatement of his pharmacist license along with advocate, Dr. Edwin Bills. Acting Director Harry Fuqua stated Dr. Christian entered into a voluntary agreement with the Pennsylvania Board of Pharmacy in December, 2001 for chemical dependency. The license was reinstated in March, 2002. In September, 2002, the Pennsylvania Board of Pharmacy suspended his license as he violated the terms and conditions of his contract by not obtaining advocacy in Tennessee. In April, 2003, Dr. Christian entered Cornerstone and in June, 2003, while at home for the weekend, he decided not to return. Dr. Christian surrendered his Tennessee license in September, 2003. The Pennsylvania license remains suspended. Tennessee is Dr. Christian’s original state of licensure and he is the subject of an HHS/OIG exclusion. Dr. Christian stated the HHS/OIG exclusion was due to the suspension of his license in Pennsylvania. Dr. Christian advised he has no criminal violations or probations. Dr. Christian’s support network consists of friends, co-workers, and family. Dr. Edwin Bills advised the Board Dr. Christian is compliant with the TPRN requirements. After board discussion, Dr. Robert Mitchell motioned to:

1. Respondent does hereby agree to the reinstatement of license number **4135** with the following probationary conditions. Said probation shall remain in effect for a period of ***five (5) years, from May 25, 2004 to May 25, 2009.**

- (a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b).
- (b) The Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, Kenneth Tullis, MD, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes primary physicians;
- (c) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- (d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- (e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- (f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the

Board, such as the Tennessee Pharmacists Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;

- (g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he or she entered into with Tennessee Pharmacists Recovery Network. Respondent shall return a copy of said contract with this Consent Order to the Board office;
- (h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years, however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;
- (i) If the license has been inactive, delinquent, suspended or revoked:
 - (i) **Less than one (1) year, the pharmacist shall:**
 - I. Provide written notice requesting an active license;
 - II. Satisfy all past due continuing pharmaceutical education; and
 - III. Pay all cumulative license renewal fees and any applicable penalties.

Dr. Julie Frazier made a friendly amendment to the motion to **change the period of probation** from five (5) years to ***ten (10) years, May 25, 2004 – May 25, 2014.** Mrs. Monica Franklin seconded the amendment to the motion. Dr. Sheila Mitchell seconded the motion. The Board requests Dr. Christian to inform all employers of his HIS/OIG exclusion. All were in favor and the motion carried.

**JENNIFER SPIVEY, DPH – REQUEST FOR REINSTATEMENT OF LICENSE
MCKENZIE, TN**

Dr. Jennifer Spivey appeared before the Board, along with advocate, Dr. April Coleman, to request the reinstatement of her pharmacist license. Acting Director Harry Fuqua stated on October 31, 2003, Dr. Spivey admitted to the diversion of No-Tuss cough syrup for personal use. In November, 2003, Dr. Spivey contacted Dr. Kendall Lynch and she was referred to TPRN. In February, 2004, Dr. Spivey was discharged from Cresthaven. Dr. Spivey stated in April, 2002, she had obtained a prescription for No-Tuss for a respiratory infection. Dr. Spivey stated the No-Tuss suppressed her cough, allowed her to sleep at night, relieved carpal tunnel syndrome pain and stress. Dr. Coleman stated Dr. Spivey was compliant with the TPRN contract and has completed the 90/90 on May 5, 2004. After Board discussion, Dr. Julie Frazier motioned:

1. Respondent does hereby agree to the reinstatement of license number **9426** with the following probationary conditions. Said probation shall remain in effect for a period of five (5) years, from **May 25, 2004 to May 25, 2009.**
 - (a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b).
 - (b) The Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, Luis Pagoaga, MD, except in the case of an emergency or upon a proper referral from the Respondent's primary

physician. The Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes primary physicians;

- (c) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- (d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- (e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- (f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacists Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;

- (g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he or she entered into with Tennessee Pharmacists Recovery Network. Respondent shall return a copy of said contract with this Consent Order to the Board office;
- (h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years, however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a “floater” for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;
- (i) If the license has been inactive, delinquent, suspended or revoked:
 - (i) **Less than one (1) year, the pharmacist shall:**
 - I. Provide written notice requesting an active license;
 - II. Satisfy all past due continuing pharmaceutical education; and
 - III. Pay all cumulative license renewal fees and any applicable penalties.

Dr. Reggie Dilliard seconded the motion. All were in favor and the motion carried.

DIRECTOR’S REPORT

PREFERRED DRUG LISTING (PDL)/RX’S PRINTED –ELECTRONIC SIGNATURE

Director Kendall Lynch discussed with Mr.Yarnell Beatty, counsel for the Tennessee Medical Foundation, relevant to PDLs being amenable to therapeutic substitution if certain safeguards are built in, such as doctor modification, and no drug category substitutions; photochromic (copy deterrent) paper for prescriptions printed with electronic signatures, which are amenable if not too expensive.

PHARMACIST INVESTIGATORS – CELL PHONES

The pharmacy board investigators have new cell phones to replace the antiquated pagers.

Tennessee Board of Pharmacy
May 25 – 26, 2004
DISTRICT III MEETING
AUGUST 1 – 3, 2004
BILOXI, MS

Acting Director Harry Fuqua informed the Board that one (1) board member and the Director is allowed to attend the District III meeting to represent the Tennessee Board of Pharmacy. The Board did not vote on a candidate.

DICK GOURLEY, DPH
PROFESSOR & DEAN
UNIVERSITY OF TENNESSEE COLLEGE OF PHARMACY
KNOXVILE, TN

Dr. Dick Gourley, on behalf of the College of Pharmacy, expressed his appreciation relevant to the funding of the new pharmacy building, which was approved by the legislature on May 21, 2004.

ADJOURNMENT

President Robert Shutt adjourned the meeting on Tuesday, May 25, 2004 at 4:30 p.m. CDT.

RECONVENED

The Board of Pharmacy reconvened on Wednesday, May 26, 2004, at 9:00 a.m. CDT in Room 160 of the Davy Crockett Tower. President Robert Shutt called the meeting to order. All members were present.

WILLIAM HAMILTON, DPH – FORMAL HEARING

A copy of the court reporter's transcript is attached and will become an official document to the minutes.

Dr. Reggie Dilliard motioned to **revoke** license #6917; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

LEGALREPORT/COMPLAINTS

1. Case No.: L98-PHR-RBS-8988

The complaint alleges that the Respondent was disciplined in a neighboring state through a summary suspension proceeding because of chemical dependency and then reinstated with a five (5) year term of probation. We were recently informed that the Respondent died in September, 2003.

Recommendation: Closure

Dr. Julie Frazier motioned to **accept counsel's recommendation**; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

2. Case No.: L03-PHR-RBS-200315809

The complaint alleges that the Respondent billed a patient's insurance company for sixteen (16) prescriptions that she did not have filled. Respondent admitted that she forged the prescriptions and the Respondent was terminated from her employment.

Recommendation: Consent Order with \$1,000.00 civil penalty.

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

3. Case No.: L02-PHR-RBS-200207847

The anonymous Complainant alleges that the Respondent allows pharmacy technicians to fill prescriptions for assisted living facilities without pharmacist supervision and that drug orders are put into their computer system with no verification. An investigator spoke with the pharmacist in charge that the prescription orders are verified by a pharmacist. The PIC also stated that the computer generates a fill list for refills at the assisted living facilities. The investigator stated that the pharmacist uses this list to check refills, but found no documentation to verify this.

Recommendation: Dismissal

Mrs. Monica Franklin motioned to **accept counsel's recommendation**; seconded by Dr. Forrest Parmley. All were in favor and the motion carried.

4. Case No.: L00-PHR-RBS-200004738

The complaint alleges that the Respondent took medication from the pharmacy in which he was employed for his own personal use on approximately twelve (12) occasions in one (1) day; this conduct was caught on video tape. We were recently informed that the Respondent died in October, 2003.

Recommendation: Closure

Dr. Julie Frazier motioned to **accept counsel's recommendation**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

5. Case No.: L03-PHR-RBS-200316555

The complaint alleges that the Respondent was working as a pharmacist after the Respondent placed her license in inactive status in May, 2003. The Respondent is a Canadian citizen and was awaiting an INS work permit. When the Respondent's work permit arrived in September, 2003, the Respondent entered a training program with her present employer. As a trainee, the Respondent was always working in the presence of a supervising pharmacist and never worked alone.

Recommendation: Dismissal

Dr. Robert Mitchell motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

6. Case No.: L04-PHR-RBS-200417963

The Complainant alleges that the Respondent dispensed Coumadin 5 mg to the patient. When the patient went to another pharmacy, the other pharmacy contacted the Respondent and the Respondent stated that the patient was given generic Coumadin. The Complainant states that name brand Coumadin was prescribed and the patient was charged for the brand name. The pharmacy records show that the last time that name brand Coumadin was dispensed was in 2002. All prescriptions dispensed after that date were dispensed as Warfarin and copies of those prescriptions show that the prescriber signed all of them as "Substitution Allowed". The pharmacist states that confusion arose when the dispensing label printed the statement "Gen for Coumadin 5 mg". In terms of the overcharging allegation, it appears from the co-pays that were paid by the patient, that pharmacy was billing the medication as generic and being reimbursed for same. Also, the NDC number indicates that the product is a Barr labs generic. Notably, the statement printed on the label was not done in compliance with Tenn. Code Ann. §53-10-205(c).

Previous complaints: DPh: None

Pharmacy: None

Recommendation: Letter of Instruction about printing labels in accordance with Tenn. Code Ann. §53-10-205(c).

Dr. Julie Frazier motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

7. Case No.: L03-PHR-RBS-200316319

The Complainant states that her deceased spouse received unusually large amounts of Hydrocodone and Sonata® from 2001 to 2002. The Complainant further alleges that the prescriptions were filled too early, were paid in cash rather than through the patient's insurance and they were filled and refilled without the physician's knowledge. The pharmacist's records show that some of the prescriptions were filled too early. Although there were no notes in the patient's file, the pharmacist stated that patient's physician was always called before any early refills. Our investigator contacted the patient's physician and the physician confirmed that he was always called and the physician's notes confirmed this.

Previous complaints: DPh: (1/96, wrong directions, dismiss)

Pharmacy: (1/2000, refused to fill, dismiss) (1/2000, misfill, LOI)

Recommendation: Letter of Warning to the DPh about proper documentation in the patient's files.

Mrs. Monica Franklin motioned to accept counsel's recommendation; seconded by Dr. Robert Mitchell. A Roll Call vote was taken:

<u>BOARD MEMBER</u>	<u>VOTE</u>
Reggie Dilliard	No
Julie Frazier	No
Sheila Mitchell	No
Monica Franklin	Yes
Robert Mitchell	Yes
Forrest Parmley	Yes
Robert Shutt	No

The motion did not carry. Dr. Reggie Dilliard motioned to **issue a Letter of Instruction to the pharmacist**; seconded by Dr. Julie Frazier. Mrs. Monica Franklin and Dr. Robert Mitchell voted "no". The motion carried.

8. Case No.: L04-PHR-RBS-200418707

The complaint alleges that the Respondent was terminated for admitting to stealing the following drugs for his personal use: (a). One thousand eight hundred (1,800) Darvocet N 100; (b). Forty-five (45) Ultram; and (c). One hundred and twenty (12) milliliters of Robitussin AC. The Respondent was arrested and charged with Theft of Property over \$500 (Felony). The charges were reduced to a misdemeanor theft and he was fined \$25.00 plus Court costs. The Respondent stated that he had several serious health problems since 1998, particularly a staph infection. Respondent claims that he did not have time to go to the doctor, so he self-medicated. The Respondent has since gone to a pain clinic and is currently under a physician's care for his problems. The Respondent recently went to Cornerstone Recovery and it was recommended that the Respondent stay for treatment.

Recommendation: Formal Hearing (CO with 5 year term of probation)

Dr. Reggie Dilliard motioned **to authorize a formal hearing**. The Board will accept surrender of license. Dr. Julie Frazier seconded the motion. All were in favor and the motion carried.

9. Case No.: L03-PHR-RBS-200316366

The complaint alleges that the Respondent was indicted on three (3) counts of insurance fraud in September, 2003 for dispensing and billing the insurance company for drugs for his wife without the authorization of a physician. Based on the indictment, the Respondent entered into a Memorandum of Understanding with the Circuit Court which suspends prosecution of the case for a period of one (1) year subject to the following conditions: (a). He will not change residence or employment or leave the county or the state without permission of the Court; (b). No excessive use of alcohol and no drugs; (c). Do not associate with persons of ill repute; (d). Needs the Court's permission to use firearms; (e). Report all arrests to the Court; (f). Obey all laws; (g). Shall not be out at night at unusual hours;

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(h). Shall work diligently at a lawful occupation; (i). Required to observe special conditions of the Court and be a good citizen.

Previous complaints: (5/94, illegal substitution, \$500.00 and 1 year probation)

Recommendation: Formal Hearing (CO with 3 year term of probation with the addition terms that he must comply with the terms of MOU from Circuit Court and he cannot fill any prescriptions for himself or members of his family.

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

10. Case No.: L03-PHR-RBS-200317328

The Complainant is a physician who states that Cartia XT 240 mg was illegally substituted for Cardizem CD 240 mg without permission. The DPh who filled the prescription stated that the only thing that he remembers about this prescription is that the doctor's office called about the switch from a brand name to a generic. DPh states that he asked the technician about it and the tech said that was switched because the patient was on TennCare and the insurance mandated it. The DPh states that they probably requested the generic from the physician when they had to obtain authorization for the refill. After they requested the generic, the doctor's office then called in another script with the generic (pharmacy's records indicate that the generic was called in). The technician remembers calling the doctor's office back and verifying the switch to the generic.

Previous complaints: DPh (PIC): (2/96, misfill, dismiss)(12/96, overcharge, dismiss)

Technician: None

Pharmacy: None

Recommendation: Letter of Instruction about proper documentation.

Dr. Reggie Dilliard motioned to **accept counsel's recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

11. Case No.: L03-PHR-RBS-200317709

The complaint was initiated after the Respondent, hospital pharmacy, reported itself to the Board because an error resulted in serious physical injury and in this case, resulted in the death of a patient. When the total parental nutrition solution was prepared for a neonate, it was prepared with a high level of Sodium Chloride. An investigation revealed that the hospital prepares the TPN solutions by an automated system. The pharmacist who filled the order said that he failed to change the unit of measure for the Sodium Chloride from the previous day's setting and entered the prescription incorrectly. That same pharmacist subsequently supervised the compounding by a technician. The computer printed a warning label stating: "Sodium ion above Upper limit! Requested: 140.984/kg Upper limit : 5.1kg." The labels generated by the TPN compounding system were double-checked against the original order by another pharmacist. Both pharmacists overlooked the error and warning label.

As a result of the error the PIC has taken the following steps to prevent recurrence:

Requiring all pharmacists to convert all orders to units per deciliter only;

Requiring all pharmacists to clarify all non-standard format NICU TPN orders with the prescriber;

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Reviewed P & P with all pharmacists about double-checking orders and all warning labels;
Implementing absolute automated compounding limits on TPN additives when software is available;
Review and revise, in coordination with Neonatology, the recommended TPN additive limits thereby allowing the TPN compounding system to generate warning labels only when clinically significant;
and
Review NICU TPN ordering format in coordination with Neonatology.

Recommendation: Consent Order for a ten (10) day suspension.

Dr. Reggie Dilliard motioned to **issue a Civil Penalty of \$1,000 to each pharmacist and a Letter of Warning**. Dr. Julie Frazier seconded the motion. All were in favor and the motion carried.

12. Case No.: L04-PHR-RBS-200418572

The Complainant alleges that the pharmacist shorted him two (2) tablets of Hydrocodone 10/50 and that the pharmacist refused to transfer a copy of the prescription to another pharmacy and “slandered” the Complainant. The pharmacist did not address the alleged shortage in his response, but states that the Complainant’s prescription was filled on 1/19/04. On 2/9/04, the Complainant asked for a refill and the DPh informed him that it was too early. The Complainant called back again on 2/14/04 and asked again for a refill when he was once again told that it was too early. On that same day, the Complainant asked to have his prescription transferred to another pharmacy, but that pharmacy refused the transfer. On February 16, 2004, the prescription was transferred to a third pharmacy where it was refilled. On that same day, the DPh states that the Complainant entered the pharmacy and lunged at him, cursing and threatening. Security removed the Complainant. Four (4) other pharmacy employees confirmed this account.

*Previous complaints: DPh (PIC): None
Pharmacy: None*

Recommendation: Dismissal

Dr. Sheila Mitchell motioned to **accept counsel’s recommendation**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

13. Case No.: L04-PHR-RBS-200417864

The Complainant alleges that the pharmacist mistakenly filled her 10 month old child’s prescription for Zyrtec liquid with Zantac liquid. The patient consumed 3 ml of the wrong product with no adverse effect. The DPh admits the error and states that after this incident, he completed a continuing education program about prescription errors. The PIC also responded to the incident and states that she has separated these similar sounding medications in different areas of the pharmacy and she has installed color-coded mylars with “tall man” lettering on the drug shelves in order to distinguish these and other sound-alike medications. PIC states that she has also reinforced of their counting scale’s bar code scanning technology to ensure that the NDC numbers on the drug matches the one on the prescription. Lastly, she recommended that all of her pharmacists complete a CE program about prescription errors.

*Previous complaints: DPh: (1/97, wrong directions, reg letter)
Pharmacy: None*

Recommendation: Letter of Warning about misfill and about possible lack of patient counseling

Dr. Robert Mitchell motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

14. Case No.: L04-PHR-RBS-200418025

The Complainant alleges that the his prescription for Adalat 30 mg one tablet daily was erroneously filled and dispensed with Atarax 10 mg three tablets daily. None of the incorrect medication was ingested by the patient. The DPh states that the Complainant phoned on refills on the pharmacy's automated system. When the DPh realized that one of the prescriptions was out of refills, he faxed a refill request to the patient's physician. When the certified tech retrieved a call from the voice mail from the physician's office, she thought they said "Atarax 30 mg". After taking the message from the voicemail, the tech asked if the strength was unusual. DPh stated that it did not seem unusual although Atarax does not come in 30mg dosages; it does come in 10 mg dosages.

Previous complaints: DPh: None

Technician: None

Pharmacy: (5/2000, misfill, LOI)

Recommendation: Letter of Warning to PIC directing the PIC to conduct an in-service training for all employees about P & P for verifying voice mail prescriptions and refills.

Dr. Robert Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

15. Case No.: L04-PIC-RBS-200418028

The Complainant alleges that the Respondent refused to fill her prescription for Oxycontin because she was on TennCare and the only offered her three (3) tablets and then refused to fill the balance of the prescription. The pharmacist responded that when he attempted to fill the prescription and bill it to TennCare, the carrier stated that it was not on TennCare's preferred drug list. At that time, the pharmacist gave the Complainant a three (3) day supply of the drug; she was told that if she accepted the three (3) day supply, then they could not fill the remainder of the prescription because it was a Schedule II drug. The pharmacist did give the Complainant the option of paying cash for the prescription which the Complainant did later that day.

Previous complaints: DPh: None

Technician: None

Pharmacy: (5/01, refuse to fill, dismiss); (12/01, mislabeled, LOI); (11/02, misfill, LOI)

Recommendation: Dismissal

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

16. Case No.: L04-PHR-RBS-200418177

The Complainant claims that she called in a refill for her husband's prescription for Tricor and when she went to pick it up, the pharmacist told her it had to be approved by the husband's physician. The Complainant then requested a 72 hour supply of the drug, but the pharmacist wouldn't dispense it because it wasn't a life-threatening condition.

Respondent states that when he attempted to fill the prescription for Tricor, he did not receive a confirmation, but got the message "prior approval required". He attempted to override the code, but received the same response. The pharmacist attempted to call the insurance company to resolve the issue, but he was unable to make contact with anyone. Pharmacist states that if prior approval could not be obtained, then the physician could change the prescription to a drug on the preferred drug list, but that he did not offer to sell her a 72 hour supply. Pharmacist then told the Complainant to come back the following week and that he would continue to seek approval for the drug; the Complainant never came back.

*Prior complaints: DPh: None
Pharmacy: None*

Recommendation: Dismissal

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

17. Case No.: L04-PHR-RBS-200418362

The Complainant alleges that the pharmacist filled her prescription for Lodine on November 25, 2003 with outdated medication. The expiration date on the bottle was November, 2003 and the Complainant realized that the medication was outdated when she took her last pill on January 30, 2004. The Complainant further alleges that her four-month-old child's prescription for Augmentin dispensed on December 1, 2003, was not reconstituted and it did not have directions on the label. The child did not consume any of the medication. The Complainant claims that the next day they took it back to be mixed properly and have directions put on it.

The dispensing pharmacist for the first incident, admits dispensing the outdated Lodine. The dispensing pharmacist for the second incident, has no recollection of it and there is no record of a complaint.

*Prior complaints: DPh (GW): (10/92, refuse to fill, dismiss)
DPh (HS): None
Pharmacy: (2/92, wrong directions, reg letter)*

Recommendation: Letter of Warning for DPh who filled prescription for outdated Lodine

Mrs. Monica Franklin motioned to **issue a Letter of Instruction**; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

18. Case No.: L04-PHR-RBS-200418634

The Complainant is the daughter of and executrix for the deceased patient. The Complainant alleges the following: (1). The pharmacy sent discontinued medications after the patient was declared a hospice patient. The Complainant does state that once the pharmacy was notified that he was a hospice patient, the pharmacy sent a revised statement deducting the amount that was paid by Medicare. The pharmacy states that they were not made aware that the patient was in hospice care until approximately twenty (20) days after they dispensed the meds. Once they were informed that he was a hospice patient, they then billed hospice for the medications that would be covered by them; and (2). Complainant was not credited accurately for returned/unused medications. Complainant states that she was given a minimal credit for the medications. The pharmacy states that the Complainant was credited, but that most of the credit was due to hospice and not the patient.

Prior complaints: DPh (PIC): None
Pharmacy: None

Recommendation: Dismissal

Dr. Julie Frazier motioned to **accept counsel's recommendation**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

19. Case No.: L04-PHR-RBS-200418764

The Complainant alleges that her prescriptions for Soma and Seroquel were given to an unknown person who was not authorized to pick up the medications. The Complainant further alleges that the pharmacy refused to allow her to view the video tape of the person who picked up her medications and they refused to fill any future prescriptions. Additionally, the Complainant alleges that she was previously shorted five (5) tablets of Oxycontin. The pharmacist responded that because they had too many complaints from Complainant they agreed that they could no longer provide services to her. The pharmacist also noted that she has made complaints in the past that she has been shorted medication and that typically many individuals have picked up her medication in the past. However, the pharmacist did not address whether the medicine was given to the incorrect person and what their P & P is for checking the ID of the person picking up the medication.

Prior complaints: DPh (PIC): None
Pharmacy: (1/96, shorted Rx, Dismissed)

Recommendation: Investigation

Dr. Reggie Dilliard motioned to **accept counsel's recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

20. Case No.: L04-PHR-RBS-200418776

The complaint alleges that the Respondent, a registered technician, removed a prescription for 50 Hydrocodone 10/500 from the will call bin without authorization and walked out of the pharmacy with it; this incident was caught on video tape. A further investigation by the pharmacy revealed that the technician made a notation in the comment field of the patient's profile that she was authorized to pick up the patient's medication. The patient had a prescription for Hydrocodone that was sold once and

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then it was verified and deleted 36 times after that. The prescribing doctor stated that he authorized the original prescription, but that he did not authorize any refills. This investigation was started because the pharmacy noted a large number of negative adjustments for Hydrocodone.

Recommendation: Formal Hearing

Dr. Sheila Mitchell motioned to **accept counsel's recommendation plus a Consent Order for surrender of registration**. Dr. Julie Frazier seconded the motion. All were in favor and the motion carried.

21. Case No.: L04-PHR-RBS-200418777

The complaint alleges that the Respondent altered five (5) prescriptions written for Pentazocine from 9/23/03 to 1/30/04 by changing the amount prescribed from 40 tablets to 240 tablets. The prescriber stated in an affidavit that the quantities dispensed on the prescriptions were not the quantities authorized. The Respondent later admitted to altering the prescriptions. The Respondent also submitted to substance abuse evaluation which could not be completed because of the Respondent's medical condition which required pain medication. However, the Respondent referred to an OB/GYN physician for a medical assessment and later to a hospital-based pain control practice and there was not indication of chemical impairment.

Prior complaints: None

Recommendation: Consent Order for \$1000.00 civil penalty

Dr. Robert Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Reggie Dilliard. Mrs. Monica Franklin voted "no". The motion carried.

22. Case No.: L04-PHR-RBS-200418838

The Complainant alleges that the patient's prescriptions for Cozaar, Levoxyl, Coumadin, Lanoxin, Furosemide and Amoxicillin were filled on December 13, 2003 and then subsequently filled on December 19, 2003. The Complainant further alleges that this was done for increased revenue since the pharmacy was going out of business. The pharmacist states that the prescriptions were filled on the dates identified. The pharmacy planned to go out of business on December 27, 2003 and sent letter to their customers on or about December 10, 2003. He suspects that the patient, who was an assisted living patient, ordered the medications early to ensure an adequate supply until she could find a new pharmacy. Since all of the prescriptions were for maintenance medications, the decision was made to fill the prescriptions.

Previous complaints: DPh: None

Pharmacy: (11/02, Rx may have contributed to patient's death, dismiss)

Recommendation: Dismissal

Dr. Robert Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

Dr. Reggie Dilliard stated Dr. Dan Luce with Walgreen Corporation would like to appear on July 14, 2004 and make a presentation relevant to the industry innovation and trends.

**CONSENT ORDER FOR CHEMICAL IMPAIRED
LEGAL COUNSEL, ALISON ZANE**

Ms. Alison Zane requested from the Board to grant her the authority to issue a Consent Order for the chemically impaired. Dr. Robert Mitchell motioned **to grant Ms. Zane the authority**; seconded by Dr. Reggie Dilliard. All were in favor and the motion carried.

ADJOURNMENT

President Robert Shutt entertained for a motion to adjourn, seconded by Dr. Reggie Dilliard. The Board of Pharmacy adjourned on Wednesday, May 26, 2004 at 2:25 p.m. CDT.

Respectfully submitted,

Robert Shutt, President

Harry Fuqua, Acting Director